

216

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45992-2023
Date of decision: 04.10.2023

RESHAM SINGH ALIAS RESHU

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a fourth petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.257 dated 09.11.2019, under Section 21 of the NDPS Act and Sections 379, 411, 473 of the IPC added later on, registered at Police Station Civil Lines, Bathinda, District Bathinda, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody from 09.11.2019, which is more than 3 years and 10 months and he has clean antecedents and is not involved in any other case under the NDPS Act. He further submitted that it is a case where the allegation against the petitioner and the other co-accused, namely, Gurpreet Singh is that there was an alleged recovery of 300 grams of *Tramadol* from them which is marginally higher than

the commercial quantity as so defined under the provisions of NDPS Act. He further submitted that earlier also the petitioner had filed regular bail petition before this Court bearing CRM-M-27384-2021, which was disposed of on 22.03.2023 by a Coordinate Bench of this Court with a direction to the learned trial Court to expedite the trial and conclude the same at the earliest and as per law. He also submitted that at that point of time, 13 out of total 33 prosecution witnesses were examined and more than six months have elapsed but thereafter not even a single prosecution witness has been examined and even now also the total prosecution witnesses examined are 13, which was the same at the time when the earlier regular bail petition was disposed of as aforesaid. He further submitted that the delay of the trial has not been occasioned because of any fault of the petitioner and the petitioner not being a habitual offender and not involved in any other case under the NDPS Act has already suffered incarceration for more than 3 years and 10 months and therefore in view of the aforesaid facts and circumstances and considering the long custody of the petitioner, the bar contained under Section 37 of the NDPS Act is not applicable to the present petitioner in view of the judgments of the Hon'ble Supreme Court in *Special Leave to Appeal (Criminal) No.6690 of 2022* titled as "*Dheeraj Kumar Shukla versus The State of Uttar Pradesh*" and *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "*Rabi Prakash versus The State of Odisha*".

3. On the other hand, Mr. Sarabjit Singh Cheema, DAG, Punjab submitted that it is correct that the petitioner is in custody from 09.11.2019, which is more than 3 years and 10 months and till date 13 prosecution witnesses

have been examined. He further submitted that it is also correct that the petitioner is not involved in any other case under the NDPS Act but he is involved in one case under Section 379-B of the IPC. He has however opposed the grant of regular bail to the petitioner on the ground that the total recovered quantity from two accused including the petitioner was 300 grams of *Tramadol*, which is marginally higher than the commercial quantity as defined under the provisions of NDPS Act.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner has faced incarceration for more than 3 years and 10 months. Earlier when the petitioner filed regular bail petition before this Court, then a Coordinate Bench of this Court disposed of the said petition with a direction to the learned trial Court to expedite the trial and conclude the same at the earliest and as per law. The aforesaid order was passed on 22.03.2023 and till date, as per learned counsel for the parties, again the position remains the same and no further prosecution witness has been examined. Although the recovered quantity from the petitioner and the other co-accused, namely, Gurpreet Singh was marginally higher than the commercial quantity as defined under the provisions of NDPS Act but this Court would consider the bar contained under Section 37 of the NDPS Act in the light of aforesaid judgments as relied upon by learned counsel for the petitioner as aforesaid.

6. Hon'ble Supreme Court in *Dheeraj Kumar Shukla's case (supra)* has observed as under:-

“3. It appears that some of the occupants of the 'Honda City' Car including Praveen Maurya @ Puneet Maurya

have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

7. Recently, Hon'ble Supreme Court in **Rabi Prakash's case (supra)** has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

8. The petitioner is stated to be not involved in any other case under the NDPS Act but is involved in one case under Section 379-B of the IPC. The total custody of the petitioner is very large i.e. more than 3 years and 10 months

and therefore this Court is of the considered view that in view of the aforesaid judgments of the Hon'ble Supreme Court and in the light of Article 21 of the Constitution of India, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner. Furthermore, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

9. Therefore, considering the aforesaid totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

10. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

11. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

04.10.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No